

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ANDREW S. MACKEY,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent.

* **MOTION TO VACATE**
* **28 U.S.C. § 2255**

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* **CRIMINAL ACTION NO.**

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* **1:10-CR-310-ELR-JFK**

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* **CIVIL ACTION NO.**

* **1:16-CV-3777-ELR**

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O R D E R

This matter is before the Court for consideration of the Report and Recommendation (“R&R”) of Magistrate Judge Janet F. King [Doc. 318]. Judge King recommends that Petitioner’s § 2255 Motion [Doc. 305] and Petitioner’s Amended § 2255 Motion [Doc. 310] be denied and a Certificate of Appealability be denied as well. In the time period allotted for the parties to object to the R&R, Petitioner, filed *pro se* objections [Doc. 326]. For the following reasons, the Court **ADOPTS** the R&R and **OVERRULES** Petitioner’s objections.

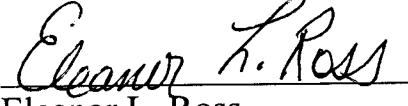
The district court reviewing an R&R “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to

which objection is made.” 28 U.S.C. § 636(b)(1). If neither party objects, the district judge need only review the R&R for clear error and “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* A party objecting to an R&R “must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court.” United States v. Schultz, 565 F.3d 1353, 1361 (11th Cir. 2009) (quoting Marsden v. Moore, 847 F.2d 1536, 1548 (11th Cir. 1988)) (internal quotation marks omitted.). If there are no specific objections made to factual findings made by the magistrate judge, there is no requirement that those findings be reviewed *de novo*. Garvey v. Vaughn, 993 F.2d 776, 779 n. 9 (11th Cir. 1993). Absent objection, the district court judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge],” 28 U.S.C. § 636(b)(1)(C), and may accept the recommendation if it is not clearly erroneous or contrary to the law. Fed. R. Crim. P. 59. In accordance with 28 U.S.C. § 636(b)(1)(C), and Rule 59 of the Federal Rules of Criminal Procedure, the Court has conducted a *de novo* review of those portions of the R&R to which Defendant objects and has reviewed the remainder of the R&R for plain error. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983).

After conducting a *de novo* review of those portions of the R&R to which Petitioner objects and reviewing the remainder of the R&R for plain error, this Court finds that the Magistrate Judge's factual and legal conclusions are correct.

Accordingly the Court **OVERRULES** Petitioner's Objections and **ADOPTS** the R&R [Doc. 318] as the Opinion and Order of this Court. For the reasons stated in the R&R, the Court **DENIES** Petitioner's Motion to vacate sentence under 28 U.S.C. § 2255 [Doc. 305] and Petitioner's Amended § 2255 Motion [Doc. 310]. Additionally, the Court **DECLINES** to issue a certificate of appealability because after considering 28 U.S.C. § 2253(c)(2), the Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right. The Court **DIRECTS** the Clerk to **CLOSE** the civil case associated with Petitioner's § 2255 Motion: Civil Action No. 1:16-CV-3777-ELR.

SO ORDERED, this 17th day of August, 2018.


Eleanor L. Ross
United States District Judge
Northern District of Georgia